

COMMISSION ON JUDICIAL PERFORMANCE
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JUDICIAL PERFORMANCE COMMISSION ISSUES
DECISION AND ORDER IMPOSING PUBLIC CENSURE OF
JUDGE PETER J. MCBRIEN

The Commission on Judicial Performance has issued a severe public censure of Judge Peter J. McBrien of the Sacramento County Superior Court. The vote of the Commission was seven ayes and two noes. The two dissenting members would have removed Judge McBrien from office. Two members did not participate in this matter.

Judge McBrien engaged in four instances of misconduct in his handling of the marital dissolution matter of *Mona Lea Carlsson v. Ulf Johan Carlsson* over a period of months. In its decision, the Commission states, "Judge McBrien's conduct in the *Carlsson* case is unbefitting a judge and casts disrepute upon the judiciary." The Commission determined that a severe public censure is warranted "based on the gravity of this misconduct, coupled with Judge McBrien's pervasive lack of accountability and insight into the impropriety of his conduct."

The Commission determined that Judge McBrien engaged in the most serious form of judicial wrongdoing, willful misconduct, through his prolonged investigation of Mr. Carlsson's possible violation of the law relating to state employees' financial disclosures and by reporting the potential violation to Mr. Carlsson's employer, resulting in the termination of Mr. Carlsson's employment. Judge McBrien did not disclose his actions to the parties and continued to preside over post-trial matters. He disqualified himself only after learning that Mr. Carlsson was terminated from his state employment. Quoting from the special masters' report, the Commission states in its decision, "Judge McBrien did not simply learn of a possible violation of the law by presiding over the *Carlsson* trial, he 'joined the fray' through his investigation and lengthy pursuit of the issue."

Judge McBrien also engaged in two instances of conduct prejudicial to public esteem for the judicial office or "prejudicial misconduct," the second most serious category of judicial misconduct. In one instance, he abruptly terminated the *Carlsson* trial in the middle of a witness's testimony, announcing "[t]his trial is over" upon receiving a phone call from law enforcement requesting an emergency protective order, leaving the parties in the courtroom

uncertain how to proceed. The Court of Appeal reversed the judgment in the *Carlsson* case concluding that the manner in which Judge McBrien terminated the trial rendered the trial fundamentally unfair and denied Mr. Carlsson his right to due process. The Commission agreed and states in its decision: “Abruptly terminating a trial in the middle of a witness’s testimony is contrary to commonly held precepts of due process and the expectation of litigants, witnesses, and attorneys.” In a second act of misconduct prejudicial to public esteem for the judiciary, Judge McBrien improperly threatened an attorney with contempt for failing to comply with his request to produce financial disclosure documents that were not relevant to the proceeding.

In the final instance of misconduct, Judge McBrien exhibited impatience towards Mr. Carlsson’s attorney by repeatedly threatening her with a mistrial if she did not complete her case within the time estimate. He also made derogatory and discourteous comments to her in open court which the Commission determined violates the judge’s duty under the Code of Judicial Ethics to be patient, dignified and courteous to those who appear before him.

The Commission’s Decision and Order of Public Censure is available on the Commission’s Web site at www.cjp.ca.gov (under “Press Releases” and “Public Discipline – 1960 to Present”) and at the Commission’s office.

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The Commission is composed of three judges, two lawyers, and six public members. The Chairperson is the Hon. Judith D. McConnell of the Court of Appeal, Fourth Appellate District, in San Diego, California.

For further information about the Commission on Judicial Performance, see the Commission’s Web site.